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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. Nos.2117 of 2018 &
C.M.A.No.348 of 2019 &
C.M.P.No.16481 of 2018

C.M.A.No.2117 of 2018

Shriram General Insurance Company Limited,
L-EPIP, RIICO, Sitapura,
Jaipur, Rajasthan - 300 002.

... Appellant

Vs.

1.K.S.Bhaasha
2.Syed Afros
3.A.Chan Mohamed
4.The Regional Manager,
ICICI Lombard General Insurance Company Limited,
Regional Office, Zenith House,
Keshavarao Khade Marg, Mahalaxmi,
Mumbai - 400 034. ... Respondents

(R-3 & R-4 impleaded as party respondents
vide order dated 11.04.2022 made in
C.M.P.No.955 of 2020 in C.M.A.No.2117 of 2018)

Prayer: Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicle Act, 1988 against the judgment and decree made
in M.C.O.P.No.785 of 2013, on the file of Motor Accidents Claims
Tribunal, Special Sub Court, Krishnagiri, dated 07.11.2017.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.S.Viswanathan for M/s.Dass &
Viswa Associates for R-1
Ms.Srividhya for R-4



C.M.A.No.348 of 2019

K.S.Bhaasha

... Appellant

WEB COPY

Vs.

1.Syed Afros

2.Shriram General Insurance Company Limited,
L-EPIP, RIICO, Sitapura,
Jaipur, Rajasthan - 300 002.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in M.C.O.P.No.785 of 2013, on the file of Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri, dated 07.11.2017.

For Appellant : Mr.S.Viswanathan
for M/s.Dass & Viswa Associates

For Respondents: Mr.S.Dhakshnamoorthy for R-2

C O M M O N J U D G M E N T

K.KALYANASUNDARAM, J.,

C.M.A.No.2117 of 2018 is filed by the Insurance Company questioning the award passed in M.C.O.P.No.785 of 2013 by the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. C.M.A.No.348 of 2019 is filed by the claimant seeking enhancement of compassionation.

2. Facts in brief:-

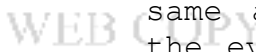
The claimant met with an accident on 26.07.2010 at 03.15 hours when he was travelling in the Tata Indica car bearing registration No.TN-24-H-3731. It is his case that when the car was proceeding near Udhayapura Village, Dhandiganapalli Post, Chennarayapatna in Karnataka State, the driver of the lorry bearing registration No.KA-19-2835 came in a rash and negligent manner and rammed the car, in which he sustained grievous injuries. It is his further case that he was 33 years old at the time of accident and he was earning Rs.25,764/- per month from his avocation. He sought compensation for Rs.15,00,000/- from the owner of the lorry and his insurer alleging that the accident occurred due to the rash and negligent of the driver of the lorry.



4. During trial, the parties have let in oral and documentary evidence and on that basis, the Tribunal awarded compensation of Rs.10,61,500/-. Questioning the same, both the claimant and the Shriram General Insurance Company Ltd. have come up with these appeals as stated supra.

6. Per contra Mr.S.Viswanathan, learned counsel appearing for the claimant would submit that the claimant has proved that he suffered grievous injuries and due to which, he worked for some time and thereafter, resigned only on account of injury sustained in the accident. In short, the learned counsel would state that only because of the injury sustained in the accident, he resigned from the job. It is also stated that even in the year 2015, he underwent surgery, but the medical bills for a sum of Rs.88,265/- could not be produced at the time of trial and hence, those documents produced and this Court can grant compensation for the medical expenses. The learned counsel for the claimant has stated that the Medical Board has assessed the disability of the claimant as 50% and issued a disability certificate, but the Tribunal has taken the income only as 25%.

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9. On perusal of the records reveal that in respect of the same accident, claim petitions were filed and after analysing the evidence, the Tribunal came to the conclusion that both the drivers of the vehicles, viz., Car and Lorry are equally responsible for the accident. However, in the case on hand, the Tribunal held that the driver of the insurer of the appellant vehicle is solely responsible for the accident. Hence, the finding of the Tribunal on negligence is set aside. In our considered opinion, both the drivers are equally responsible for the accident.

11. In the evidence P.W.1 has admitted that even after the accident, he was working in the same company and he tendered his resignation on 17.01.2014 and on that basis, he was terminated from service. He stated in his evidence that because of the injury sustained in the injury, he was forced to resign from the job. So, we are of the view that the multiplier method applied by the Tribunal cannot be countenanced. But, at the same time, the disability certificate issued by the Medical Board can be accepted and on that basis, an Award can be passed. The claimant is entitled for Rs.3,000/- per percentage and hence, he will be entitled to Rs.1,50,000/- towards loss of permanent disability.

12. It appears the claimant has sustained grievous injuries and even after the trial, he was taking treatment. So, he is entitled for Rs.2,00,000/- for future medical expenses and for the bill produced by the claimant. Rs.4,61,000/- awarded by the Tribunal under the head of medical expenses is confirmed. Considering the nature of injuries sustained by the claimant and the treatment undergone by him, a sum of Rs.50,000/- awarded under the head of pain and suffering and Rs.50,000/- awarded under the head of loss of amenities are on the lower side, and hence, a sum of Rs.1,00,000/- is awarded under the head of pain and suffering and Rs.1,00,000/- is awarded under the head of loss of amenities. It is also to be noted that due to the injury sustained by the claimant, he is dependant on others



even to do his routine activities, a sum of Rs.20,000/- is awarded under the head of attender charges and Rs.20,000/- is awarded under the head of extra nutrition. Further, the awarded passed by the Tribunal under the head of damage to clothing is enhanced to Rs.4,000/- from Rs.500/-. The award passed by the Tribunal a sum of Rs.10,000/- under the head of transportation is confirmed. Accordingly, the amount awarded by the Tribunal is re-calculated and modified as under:-

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of earning capacity	4,80,000/-	-
2.	Permanent disability	-	1,50,000/-
2.	Medical expenses	4,61,000/-	4,61,000/-
3.	Future Medical expenses and for the bill produced by the learned counsel for the appellant	-	2,00,000/-
3.	Transportation	10,000/-	10,000/-
4.	Extra Nutrition	5,000/-	20,000/-
5.	Attender Charges	5,000/-	20,000/-
6.	Pain and suffering	50,000/-	1,00,000/-
7.	Loss of amenities	50,000/-	1,00,000/-
9.	Damage to Clothing	500/-	4,000/-
	Total	Rs.10,61,500/-	Rs.10,65,000/-

Hence, the award amount is enhanced to Rs.10,65,000/- from Rs.10,61,500/- and the rate of interest awarded by the Tribunal is reduced to 7.5% per annum from 9% per annum. In total, the claimant is entitled to Rs.10,65,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

13. In view of the above finding on the negligence, the appellant Insurance Company is liable to pay 50% of the award amount. The third respondent and fourth respondent in CMA.No.2117 of 2018, who are the owner and insurer of the Car bearing Registration No.TN-24-H-3731, are jointly and severally



liable to pay the balance 50% amount. Thus, they are directed to deposit the modified award amount with proportionate interest and costs, less the amount already deposited, if any, within a period of eight weeks to the credit of the claim petition. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with accrued interest and costs.

14. Accordingly, the Appeal filed by the Insurance Company in C.M.A.No.2117 of 2018 and the Appeal filed by the claimant in C.M.A.No.348 of 2019 are partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

r n s
To

The Special Sub Court,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1cc to Mr.R.Sreevidhya, Advocate Sr.30232
+1cc to M/s.Dass and Viswa, Advocate Sr.30248

C.M.A. Nos.2117 of 2018 &
C.M.A.No.348 of 2019 &
C.M.P.No.16481 of 2018

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